RECENT CASE NOTES

ADMINISTRATIVE LAW—REVIEW OF ADMINISTRATIVE DISCRETION—REVOCATION OF SECOND CLASS MAIL PRIVILEGE.—The relator, having had due notice, was represented at a hearing before an administrative officer, at which an order was entered revoking its second-class mail privilege granted in 1911. This order was based on certain articles, appearing in the relator's newspaper at frequent intervals during a period of five months. These articles were declared to be non-mailable because they violated the Espionage Act. On appeal to the Postmaster-General, the order was approved. The relator then brought this writ of error on the grounds that the order was unconstitutional, because it did not afford the relator a trial in a court of competent jurisdiction, that the order deprived the relator of the right of free speech, and was destructive of the rights of free press, and deprived it of its property without due process of law. *Held,* that the order was constitutional. Brandeis and Holmes, JJ., *dissenting. United States ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson* (1921) 41 Sup. Ct. 352.

Hearings, similar to that accorded to the relator in the instant case, when fairly conducted, satisfy all the requirements of due process of law. *Public Clearing House v. Coyne* (1904) 194 U. S. 497, 24 Sup. Ct. 789; see *Smith v. Hitchcock* (1912) 226 U. S. 53, 60, 33 Sup. Ct. 6, 8; 2 Willoughby, *Constitutional Law* (1910) 1283. Since the filing of the petition in the instant case the Espionage Act had been held constitutional. *Abrams v. United States* (1919) 250 U. S. 616, 40 Sup. Ct. 17; see COMMENTS (1920) 29 YALE LAW JOURNAL, 337; 33 HARV. L. REV. 442. The second-class privilege is granted upon an application of the publisher for entry in that class, after an investigation of the character of the newspaper by the Postmaster-General under the rules and regulations prescribed by him. U. S. Postal Laws & Regulations (1913) sec. 411-435; cf. *Smith v. Hitchcock, supra.* This permit contains the provision that "the authority herein given is revocable upon determination by the Department that the publication does not conform to law." The Espionage Act declares that any newspaper violating any provision of the act is "non-mailable matter" which shall "not be conveyed in the mails, or delivered from any post office or by any letter carrier." National Defense Act, 1917, sec. 1 (40 Stat. at L. 217, 230). The Postmaster-General has the power "to execute all laws relating to the postal service." Act of June 8, 1872 (17 Stat. at L. 283, 285). The holding of the court that there was a sufficient delegation of power to warrant the respondent's order seems sound. Courts are reluctant to disturb an exercise of discretion by a Postmaster-General under delegated powers. See *Bates & Guild Co. v. Payne* (1904) 194 U. S. 106, 110, 24 Sup. Ct. 595, 597; cf. *Public Clearing House v. Coyne, supra.* The objection of the dissenting judges, in the instant case, that the effect of the order, therein rendered, was to deprive the relator of the privilege of the second-class rate in the future for publishing non-mailable matter in the past, seems unsound, because, on a new application, by proving it is now publishing mailable matter, the relator would be entitled to a new permit. The dissenting opinions seem to doubt the value of this privilege. For a discussion of governmental regulations in similar matters, see Hart, *Power of Government over Speech and Press* (1920) 29 YALE LAW JOURNAL, 410.

ADMIRALTY—EXTENT OF LIABILITY TO INJURED SEAMAN.—The plaintiff was injured by an accident for which the shipowner was in no way at fault. He was

brought a long distance back to the home port and meanwhile was not furnished with proper medical attention. He brought actions to recover for the injuries, for failure to furnish him with proper medical attention, and for "maintenance and cure" after the termination of his employment. *Held,* that he could recover for the failure to furnish him with proper medical attention, and for his care for a reasonable time after the termination of his employment. *Falk v. Thurlow* (1921, Sup. Ct.) 114 Misc. 586, 187 N. Y. Supp. 57.

It is well settled that a shipowner, though himself not at fault, owes some duty to "maintain and cure" a seaman taken sick or injured in the service of his ship through no wilful misconduct of his own. *The Osceola* (1903) 189 U. S. 158, 175, 23 Sup. Ct. 483, 487; see Smith, *Liability in Admiralty for Injuries to Seaman* (1906) 19 HARV. L. REV. 418. But the courts are in conflict as to the limits of this liability. The term "cure" was probably originally used in the sense of "care," and not in the sense of healing. See *The Atlantic* (1849, S. D. N. Y.) Fed. Cas. No. 620. Some courts hold that the duty of the shipowner terminates with the completion of the voyage. *Anderson v. Rayner* [1903] 1 K. B. 589; *The J. F. Card* (1890, E. D. Mich.) 43 Fed. 92. Others consider the duty as continuing until a cure is effected as far as possible. *Reed v. Canfield* (1832, C. C. D. Mass.) 1 Sumner, 195; *The Lizzie Frank* (1887, S. D. Ala.) 31 Fed. 477. While some allow expenses for maintenance and medical treatment incurred within a reasonable time after the termination of the employment. *The Bouker No. 2* (1917, C. C. A. 2d) 241 Fed. 831; *The Ella S. Thayer* (1887, N. D. Calif.) 40 Fed. 902, 904. A seaman can recover for the injuries resulting from a failure to provide him with proper medical attention. *Scarff v. Metcalf* (1887) 107 N. Y. 211, 13 N. E. 796; *The Troop* (1902, D. D. Wash.) 118 Fed. 769. In no case, can he recover full indemnity for the injury itself, unless it was due to the failure of the owner to furnish and maintain a seaworthy vessel, or safe appliances. See *Chelentis v. Luckenbach Steamship Co.* (1918) 247 U. S. 372, 380, 38 Sup. Ct. 501, 502. The injured seaman cannot take advantage of any of the several workmen's compensation acts. *Southern Pac. Co. v. Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 524; *Knickerbocker Ice Co. v. Stewart* (1920) 253 U. S. 149, 40 Sup. Ct. 438. Thus, it appears that seamen, who have been called the "wards of the court," are now in a less favored position than land workmen under workmen's compensation acts. In view of this situation, and considering the improvidence of the average seaman, it would seem better policy to require the shipowner to maintain and care for a seaman injured in his service, not only for a reasonable time after the termination of the employment, but until cure. See federal statute of June 5, 1920, extending to seamen the benefit of the Federal Employers' Liability Act, not yet passed upon by the courts.

CONFLICT OF LAWS—FOREIGN JUDGMENTS—JURISDICTION—NATURE OF INTERPLEADER.—A, the holder of certificates in an unincorporated mutual benefit association, whose principal office was in New York, died domiciled in Maryland, his wife, B, having predeceased him. The Association levied assessments and deposited the money collected with its general beneficiary fund. The Association filed a bill of interpleader in New York against several claimants of the money, all of whom except A's son were non-residents of the state. Service was made upon the representative of B's estate by publication. Final judgment was rendered in favor of the son and the money was paid to him. After the commencement of the foregoing action, and before the attempted service upon B's representative was completed, the representative of B's estate sued the Association in Maryland. The Association set up the New York judgment, but the Maryland court decided that the New York court had acquired no jurisdiction,